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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,760	04/13/2006	Markus Klumpe	289246US0PCT	5123

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EXAMINER	
KEYS, ROSALYND ANN	

ART UNIT	PAPER NUMBER
1621	

NOTIFICATION DATE	DELIVERY MODE
06/09/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/575,760	KLUMPE ET AL.	
	Examiner	Art Unit	
	Rosalynd Keys	1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 5-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2 and 5-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. Claims 1, 2 and 5-10 are pending.

Claims 1, 2 and 5-10 are rejected.

Claims 3 and 4 are canceled.

Response to Amendment

Claim Rejections - 35 USC § 112

The rejection of claims 1, 2, and 5-10 under 35 U.S.C. 112, first paragraph is withdrawn, due to the amendments to claims 1, 5 and 6, filed, March 26, 2009.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruland et al. (WO 03/091192 A1, which is equivalent to US 7,371,716 B2), for the reasons given in the previous office action, mailed March 26, 2009.

Response to Arguments

6. Applicant's arguments filed March 26, 2009 have been fully considered but they are not persuasive.

The Applicants submit that the specific order and the relative proportions of each block is a significant aspect of the claimed invention according to which the claimed invention provides surface active substances having an optimum set of performance properties including low aquatoxicity, low odor due to unreacted alcohol, rapid wetting, low foaming and low surface tension.

This submission is not persuasive because the alkoxylate mixture disclosed by Ruland et al. have the same properties (see for example column 2, lines 15-20; column 6, lines 9-25; column 6, line 52 to column 7, line 15; and column 8, lines 23-26).

The Applicants submit that that nowhere does Ruland disclose or suggest the alkoxylate mixture of the formula (I) according to the claimed invention

$C_5H_{11}CH(C_3H_7)CH_2O(B)_p(A)_n(B)_m(A)_qH$ (I)

where the mixture is based on alkoxylates of formula (I) where A is ethyleneoxy, B is propyleneoxy, A and B are present in the form of blocks in the stated sequence, and p, n, m and q are defined according to: p is a number from 1 to 3, n is a number from 0.25 to 10, m is a number from 2 to 10, and q is a number from 1 to 5.

This submission is not persuasive because Ruland disclose an alkoxylate mixture having the formula (I)

$C_5H_{11}CH(C_3H_7)CH_2O(A)_n(B)_mH$ (I)

Where A is ethyleneoxy, B is preferably propyleneoxy, where groups A and B may be present in random distribution, alternatively or in the form of two or more blocks in any order, n is a number from 0 to 30, m is a number from 0 to 20, n + m is at least 1 (see column 1, line 58 to column 2, line 14). It is taught that in the alkoxylates according to the invention, propyleneoxy units can firstly be joined to the alcohol radical, followed by ethyleneoxy units (see column 2, lines 37-39). It is taught that if n and m have a value greater than 1, then the corresponding alkoxy radicals are preferably in block form (see column 2, lines 39-41). It is taught that n and m refer to a mean value, which arises as an average for the alkoxylates, therefore n and m may deviate from whole-number

values (see column 2, lines 41-43). It is taught that in the alkoxylation of alkanols, a distribution of the degree of alkoxylation is generally obtained, which can be adjusted to a certain extent through the use of different alkoxylation catalysts (see column 2, lines 43-47). It is taught that through the choice of suitable amounts of groups A and B, the spectrum of properties of the alkoxylate mixtures according to the invention can be adapted in each case to requirements in practice. Particular preference is given to carrying out the reaction first with propylene oxide, butylene oxide, pentene oxide or mixtures thereof and subsequently with ethylene oxide. Particularly preferably, in the formula (I), B is propyleneoxy (see column 2, lines 54-65).

Thus, based upon the teachings of Ruland et al. as a whole, one having ordinary skill in the art would have found the instant alkoxylate mixture obvious.

The Applicants submit that Ruland neither suggests nor provides motivation to one of ordinary skill in the art which would lead to the specific alkoxylates mixtures according to the claimed invention.

The Examiner respectfully disagrees. Ruland et al. do suggest the claimed alkoxylates mixtures for the reasons given above, as well as those in the previous office action, mailed December 26, 2008. Further, the skilled artisan would have been motivated to make the invention based upon the fact that Ruland et al. has shown that alkoxylate mixtures having their formula (I), wherein if n and m have a value greater than 1, then the corresponding alkoxy radicals are preferably in block form; particularly preferably, in the formula (I), B is propyleneoxy, wherein particular preference is given to carrying out the reaction first with propylene oxide and subsequently with ethylene

oxide; and that through the choice of suitable amounts of groups A and B, the spectrum of properties of the alkoxylate mixtures according to the invention can be adapted in each case to requirements in practice. In addition, Ruland et al. have shown that such mixtures exhibit excellent emulsifier properties and can be used as nonfoaming or low-foaming wetting agents for hard surfaces (see column 2, lines 15-20); that as a result of carrying out propoxylation first and subsequently ethoxylation it is possible to reduce the content of residual alcohol (see column 6, lines 9-13); and that these mixtures have low aquatoxicity and good biodegradability (see column 8, lines 23-25).

For the above reasons, the rejection of claims 1, 2 and 5-10 under 35 U.S.C. 103(a) as being unpatentable over Ruland et al. (WO 03/091192 A1, which is equivalent to US 7,371,716 B2) is maintained.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosalynd Keys whose telephone number is (571)272-0639. The examiner can normally be reached on M & T 5:30 am-7 am & 9:30 am-4:30 pm: W-F 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Sullivan can be reached on 571-272-0779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rosalynd Keys/
Primary Examiner, Art Unit 1621

June 4, 2009